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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RONALD EUGENE LAIS, Defendant and Appellant.	G041590 (Super. Ct. No. 01CF3365) O P I N I O N

Appeal from an order of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed with directions.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton and Susan Miller, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

In an earlier opinion, we reversed several counts against defendant Ronald Eugene Lais for the unauthorized practice of law (UPL) (Bus. & Prof. Code, § 6126, subd. (b)) based on the insufficiency of the evidence, and we remanded the matter for resentencing. (*People v. Lais* (May 14, 2008, G036205) [nonpub. opn.].) On remand, the trial court sentenced Lais to 12 years and eight months in prison for the 17 remaining counts of UPL, including an enhancement for some of these crimes while out on bail. (Pen. Code, § 12022.1, subd. (b).) Lais contends the trial court erred by resentencing him without addressing his request to appoint a new lawyer made six months earlier, just before remittitur of our opinion. As we explain, however, Lais abandoned that request. Simply put, the record demonstrates Lais requested new counsel under the impression his trial attorney had withdrawn. But although Lais himself chose not to appear at the new sentencing hearing or any of the five hearings leading up to sentencing, his trial attorney appeared at each of the hearings and Lais was so notified by mailed copies of the trial court's minute orders. Consequently, there was no basis for appointment of new counsel, who had not withdrawn. We therefore affirm the trial court's sentencing order. Both parties agree the trial court correctly determined Lais was entitled to 1,123 days of actual custody credits, but omitted an amended abstract of judgment reflecting the figure, which we direct the court to prepare and file.

I

FACTUAL AND PROCEDURAL BACKGROUND

On July 29, 2008, the day before remittitur issued for our earlier opinion reversing some of his convictions, Lais wrote the trial court to request a new probation report and to waive his appearance at resentencing because he did not want to lose a prison position entitling him to work-time credits. He also requested "new trial counsel

for me pursuant to my earlier motion." Defendant did not alert the trial court to the basis or relevance of his earlier motion. He explains now that, during the pendency of his earlier appeal, he had asserted in the trial court claims of ineffective assistance of counsel (IAC), which "centered on [his] desire for bail on appeal and to attack the underlying judgment." In November 2007, the trial court had denied these IAC claims, including Lais's requests for funds to investigate his trial attorney's alleged incompetence and his request for new counsel, by explaining in a minute order that the appeal divested the trial court of jurisdiction. The court added that, in any event, Lais's requests were meritless because he was not entitled to new counsel for a collateral attack on the judgment "unless and until he states a prima facie case for habeas corpus relief," which the trial court ruled Lais failed to do.

In August 2008, without responding to Lais's recent letter request for new counsel and a new probation report, the trial court resentenced Lais by minute order, without conducting a sentencing hearing.

Lais wrote another letter to the trial court in early September 2008, renewing his request for a new probation report. He also wrote: "There are several motions which need to be made in your court in light of the remit[t]it[]ur and your order. For those purposes, I request that you appoint an attorney for me to replace Kenneth Reed, *who withdrew*." (Italics added.) Specifically, Lais sought an attorney's assistance to file the following motions: "Reconsider sentence," "Return of Seized Property," and "If necessary, New Probation Report."

On its own motion, the trial court recalled its August sentencing order because "defendant and the defendant's attorney were not present at such sentencing." The trial court set a new hearing to consider whether to order a supplemental probation

report. The trial court clerk's certificate of service reflects the clerk mailed notice of the recall order and new hearing date to Lais, the district attorney, and Defense Counsel Reed.

In an early October 2008 letter to the trial court, Lais acknowledged receipt of the clerk's mailing and thanked the court for the recall order. Lais "reiterate[d]" in his letter that he would appear through counsel and waive his personal appearance so he would not lose work credits. He also noted he would "correspond with [his] attorney about any substantive issues." In closing, he added: "It seems to me that all matters in your court can be handled by phone and correspondence, including the supplemental probation report."

The trial court held a hearing on October 20, 2008, to consider Lais's probation report request. The minute order for the hearing reflects that Reed appeared as defense counsel. The court clerk mailed a certified copy of the order to Lais. The transcript of the hearing indicates the trial court considered the matter of new counsel for Lais to be closed unless he raised it again. The court observed: "Mr. Lais has indicated that he would like another attorney, but I don't believe that he is entitled to that just by sending a letter. He would have to appear at basically a *Marsden* hearing,[1] which, again, places him in a position of saying that he doesn't want to be here. [¶] So I guess that's a long way of saying, Mr. Reed, I need you to contact Mr. Lais to see what his desires are." The court continued the hearing to await Lais's input.

The trial court called the hearing twice in November, but continued it each time due to scheduling conflicts. The court's minute orders continuing each hearing identified Reed as defense counsel, and the court clerk mailed each minute order to Lais.

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[1] *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

The record on appeal does not include a transcript of the hearing finally held on December 15, 2008, but the trial court's minute order reflects that Reed appeared and notified the court Lais was waiving his presence but "would like a supplemental Probation Report prepared before the resentencing is done." The trial court granted Lais's request for a supplemental probation report. The minute order includes no suggestion Lais sought to replace Reed. The minute order identified Reed as defense counsel, and the court clerk mailed a copy of the order to Lais.

At Lais's resentencing in January 2009, Reed confirmed Lais waived his right to appear at the hearing. The trial court considered the supplemental probation report, resentenced defendant to state prison, reducing his term from 14 years to 12 years and eight months, and defendant now appeals.

II

DISCUSSION

Lais contends the trial court violated his right to effective assistance of counsel (U.S. Const., 6th Amend.) by failing to conduct a hearing on his letter requests to replace counsel (see *Marsden*, *supra*, 2 Cal.3d 118). He argues the trial court should have allowed him to appear by telephone to request new counsel, or, in the absence of an express statement he no longer desired new counsel, the court should have transported him against his will to the hearing to reveal whether he wanted a new attorney. No such measures were necessary. Reviewing the trial court's ruling under the deferential abuse of discretion standard, we agree with the Attorney General that the trial court was not required to conduct a *Marsden* hearing because the record shows Lais abandoned his interest in substitute counsel. (*People v. Vera* (2004) 122 Cal.App.4th 970, 979 (*Vera*).)

Lais requested new counsel in his July 2008 letter to the court, but characterizing the request as a *Marsden* motion is problematic. True, he hinted he was dissatisfied with his attorney "pursuant to my earlier motion." But defendant's stated grounds for that IAC motion, i.e., simply his "desire for bail on appeal and to attack the underlying judgment," reveal only Lais's desired outcomes and not that his attorney was deficient at trial, let alone that he would provide deficient representation in sentencing matters. In any event, the trial court had already ruled, in November 2007, that defendant's attacks on counsel's performance were meritless. On appeal, defendant provides no details about the earlier motion to suggest it supported a *Marsden* inquiry. A defendant may not obtain a *Marsden* hearing by "repeating and renewing complaints that the court has already heard." (*Vera*, *supra*, 122 Cal.App.4th at p. 980.)

In any event, the record discloses Lais abandoned replacing his attorney. Apart from his failed attack on his attorney's competence, the only other basis Lais asserted for new appointed counsel was his claim that Reed had withdrawn. When it became apparent that was not the case — based on Reed's continued appearances, of which Lais had ample notice — Lais did nothing. Based on Reed's representation that Lais continued to desire a supplemental sentencing report, the trial court could reasonably conclude he remained in contact with Lais. Accordingly, the court also could reasonably infer from Reed's and Lais's silence on the matter that Lais no longer sought to replace Reed once it was clear he had not withdrawn. Notably, Lais had demonstrated he knew how to contact the court when he wanted something or to respond to information in the court's minute orders, but he did nothing when five separate minute orders showed Reed had not withdrawn, but remained his counsel. Consequently, we discern no abuse of discretion in the trial court's decision not to order a hearing to determine Lais's wishes.

III

DISPOSITION

The trial court's sentencing order is affirmed. Pursuant to the trial court's finding at sentencing that defendant is entitled to 1,123 actual days of custody credits, we direct the court to prepare and file an amended abstract of judgment reflecting that figure, and to forward the abstract of judgment to the Department of Corrections and Rehabilitation.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.